IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1294 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHIBAI M VANAND

Versus

SOLANKI GOKALDAS TEPABHAI [SINCE DECEASED] THRO HEIRS

Appearance:

1. Civil Revision Application No. 1294 of 1990

MR PV HATHI for Petitioners

MR AM MEHTA for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 03/05/2005

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the judgment and order dated 27th September, 1990 passed by the learned District

Judge, Jamnagar in Regular Civil Appeal No. 57 of 1985, the respondents-defendants in Regular Civil Suit No. 335 of 1981 have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

The premises in question is one of the rooms in a house situated at Kadiawad, Jamnagar belonging to the respondent-plaintiff. The plaintiff instituted above referred Civil Suit No.335 of 1981 in the Court of learned Civil Judge [JD], Jamnagar for recovery of possession of the suit room and the arrears of rent. According to the plaintiff, the suit room was leased to the defendant no.1-one Nathibai for a monthly rent of Rs.40/=. The said Nathibai had taken the room on rent for a limited purpose of taking rest and sleeping. The said Nathibai fell into arrears of rent since 1st January, 1980 and she had unlawfully sublet or assigned the suit room to the defendant no.2. The plaintiff also claimed that he required the suit room bona fide and reasonably for his personal use. The suit was contested by the defendants vide written statement Exhs. 18 & 27 respectively. It was a common defence of the defendants that the defendant no.1 had rented one of the rooms in the suit house, not being the suit room, temporarily while her own house situated in the vicinity was under repairs; that while she was occupying one of the rooms in the suit house, she had introduced the defendant no.2 to the plaintiff and the plaintiff had leased the suit room to the defendant no.2 for a monthly rent of Rs.30/=; that the defendant no. 2 continued to pay the rent of Rs.30/= regularly, however, since the plaintiff refused to issue rent receipts, the defendant no.2 stopped paying the rent after October, 1980. The defendant no.2 also raised dispute as to the standard rent of the suit room in Civil Misc. Application No. 46 of 1981. In the said application, by interim order dated 28th April, 1981, interim standard rent was fixed at Rs.30/= per month. The defendant no.2 was directed to deposit the arrears of rent on or before 2nd May, 1981 and to continue to pay the rent on or before 5th of every English calender month. The learned Civil Judge, by the judgment and order dated 31st January, 1985 dismissed the suit. The learned Civil Judge decided that the standard rent of the suit room was Rs.25/= per month and that the defendant no.2 had paid the rent pending the suit, as directed. Feeling aggrieved, the plaintiff preferred above referred Regular Civil Appeal No. 57 of 1985 in the court of learned District Judge, Jamnagar.

The learned District Judge, Jamnagar by impugned judgment and order dated 27th September, 1990 allowed the appeal. The lower appellate Court has held that the suit room was leased to the defendant no.1-Nathibai and that the said Nathibai had unlawfully sublet the suit room to the defendant no.2 for monetary consideration. The lower appellate court was, therefore, pleased to pass decree for eviction against the defendants. Therefore, the present Revision Application.

Both the learned advocates have extensively read out the evidence on record. Mr. Hathi has submitted that the sub-tenancy was not proved. The defendant no. 2 is the lawful tenant of the plaintiff in the suit room. Mr. Mehta has submitted that the lower appellate court has considered the evidence on record in extenso. The lower appellate court has rightly recorded finding in favour of the plaintiff. He has also submitted that this Court exercising revisional jurisdiction under Section 29 (2) of the Rent Act shall not reappreciate the evidence and record its own finding to substitute the finding recorded by the lower appellate court. In support thereof, he has relied upon the judgments of the Hon'ble Supreme Court in the matters of M/s. Rajindra Kumar & Company & Another vs. Smt. Vijaya Rani [AIR 1981 SC 2010] and of Vaneet Jain v. Jagjit Singh [AIR 2000 SC 2080]. He has also relied upon the judgment of this Court in the matter of Manjulaben Wd/o. Ramanlal Nathalal & Ors. vs. Bai Gajiben Wd/o. Ramanlal Purshottam & Ors. [2001 (1) GCD 561]. He has further submitted that there cannot be any evidence of monetary consideration for unlawful sub-tenancy. The monetary consideration is required to be inferred on the facts on record. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Smt. Rajbir Kaur & Anr. vs. M/s. S. Chokesiri & Co. [(1989) 1 SCC 19].

As to the revisional jurisdiction of this Court under Section 29(2) of the Rent Act, there cannot be a dispute that the said jurisdiction is limited. The revisional jurisdiction of the High Court does not partake the scope of the appellate jurisdiction. If on evidence on record, another view is possible, the High Court would not interfere with such finding to substitute the finding of its own. As to the unlawful subletting also, I do agree that there may not be a direct evidence of monetary consideration with respect to clandestine transaction between the tenant and the sub-tenant. Such consideration has to be inferred from the facts on record.

In the present case, it is an admitted fact that the suit house has four rooms, each room was being given on rent by the plaintiff to different tenants at different times. It was the claim of the plaintiff that the suit room was given on rent to the defendant no.1 and that the defendant no.1 sublet the suit room to the defendant no.2. As against that, it was the common defence of both the defendants that the room which was leased to the defendant no.1 was other than the suit room and that the suit room was leased to the defendant no.2 at the instance of the defendant no.1. The first question, therefore, was whether it was the suit room which was leased to the defendant no.1. In my view, except the bare statement made by the plaintiff in the pleadings and the oral evidence, the plaintiff has failed to establish that it was the suit room that was leased to the defendant no.1. The plaintiff sought support from the evidence of witness Shri Chamanbhai Narsibhai, one of his tenants sometime in the year 1970. The said witness deposed that he occupied one of the rooms in the suit house for one year and a half in the year 1970. Since then, he had vacated the room in his occupation. He also deposed that while he was tenant in one of the rooms of the suit house, the suit room was occupied by the defendant no.1. Now it should be noted that it was the case of the defendant no.1 that she had rented one of the rooms in the suit house temporarily for a few months while her own house was under repairs. If her evidence is accepted, she should not have been tenant alongwith above referred witness Shri Chimanlal Narsibhai. It was not the case of the plaintiff that the defendant no.1 was tenant since the year 1970 or that she had occupied the suit room for some ten years. Reliance is also placed on the receipt book Exh.47, the only documentary evidence on record. The said receipt book is for the period from the month of January, 1979 to March, 1981. The said receipt book was produced by the plaintiff, being the counter foils of the rent receipts issued by him to his tenants in the suit house. The counter foils only show that at the relevant time, the defendant no.1 was the tenant and that she had been issued rent receipts upto the month of December, 1979. She was in occupation of the room described in the rent receipt as one with tiled roof and partitioned from a larger room. The lower appellate court has heavily relied upon the aforesaid receipt book Exh. 47 and the plaintiff's evidence of witness-Chimanlal Narsibhai and has come to the conclusion that the defendant no.1 Nathibai was the tenant in the suit room and that she had sublet or assigned the suit room to the defendant no.2.

On perusal of the evidence on record, I am of the opinion that the finding recorded by the lower appellate court is erroneous and is not supported by evidence on record. It is not proved by the plaintiff that the defendant no.1 was the tenant in the suit room since the year 1970 [as stated by witness Chimanlal Narsibhai] and that she continued to be the tenant for more than ten years. It is also not established that it was the suit room which was leased to the defendant no.1. Though the defendant no.1 categorically stated that she had handed over the possession of the room leased to her to the daughter of the plaintiff, the said daughter of the plaintiff did not come forward to give evidence. The finding recorded by the lower appellate court on inferences and surmises, not supported by evidence on record cannot be sustained.

In above view of the matter, the Revision Application is allowed with cost. The impugned judgment and decree dated 27th September, 1990 passed by the learned District Judge, Jamnagar in Reg. Civil Appeal No. 57 of 1985 is quashed and set-aside. Regular Civil Suit No. 335 of 1981 instituted for recovery of possession of the suit premises stands dismissed. Rule is made absolute.

{Miss R.M Doshit, J.}

Prakash*